IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 869 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHIMSINGH NAGJIBHAI BARIYA

Versus

AJAYBHAI N SHAH

Appearance:

1. First Appeal No. 869 of 2002

MR RN SHAH for the appellant

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 01/04/2004

ORAL JUDGEMENT

1. Appellant, original claimant of M.A.C.P. No.56 of 1989, by filing this appeal under Section 173 of the Motor Vehicles Act, 1988, has challenged judgment and

award dated October 24, 2001, of the Motor Accidents Claims Tribunal (Aux.), Panchamahals, at Godhra, and prayed for enhancement of the award of Rs.26,020/- granted by the said Tribunal to the original claimant for the accidental injuries sustained by him in the course of the vehicular accident which took place on August 27, 1988.

2. The appellant was travelling as a passenger on the date of the accident in an auto-rickshaw bearing Registration No.GRY 1007 and was proceedings in the direction of Baska Road. The said auto-rickshaw was driven by the driver in a most rash and negligent manner, with the result, the driver had lost control over the auto-rickshaw and the auto-rickshaw had turned turtle. The applicant had sustained serious injuries on the fingers of his left hand. The appellant had taken treatment in Referral Hospital, Halol, and, thereafter, when it was detected that he had sustained fracture on middle and ring fingers of right hand, he was referred to S.S.G. Hospital, Vadodara, where, he was treated as an indoor patient for the fracture for 15 days.

3. The appellant, thereafter, filed M.A.C.P. No.56 of 1989 in the Motor Accidents Claims Tribunal (Aux.), Panchamahals, at Godhra, claiming compensation of Rs.50,000/- for the accidental injuries sustained by him and on account of the permanent partial disability.

4. The Tribunal, after issuing notice to the owner and the driver of the autorickshaw and the Insurance Company with whom the auto-rickshaw was insured, had framed issues and, after appreciating the oral as well as documentary evidence, came to the conclusion that the appellant had sustained injuries on the right hand fingers in the vehicular accident due to rash and negligent driving by the driver of the auto-rickshaw bearing Registration No.GRY 1007. With regard to compensation, the Tribunal came to the conclusion that, looking to the period of treatment and the pain and agony suffered by the appellant, he was entitled to receive compensation of Rs.10,000/- under the head of pain, shock and suffering. The Tribunal concluded that it was admitted by both the sides that permanent partial disability suffered by the appellant was 4% considering it body as a whole and taking into consideration monthly income of the appellant at Rs.1500/-, the Tribunal assessed monthly loss of Rs.60.00, i.e. Rs.720/- per year. Looking to the age of the appellant, the Tribunal adopted a multiplier of 16 and awarded Rs.11,520/- under the head of future economy loss. The Tribunal also awarded Rs.1500/- for actual loss of income of two months

to the appellant and further awarded Rs.1000/- for transportation charges and for special diet.

5. As stated hereinabove, the appellant has approached this Court for enhancement of the compensation by filing this appeal.

6. Heard learned advocate, Mr. R.N. Shah, for the appellant.

7. The learned advocate for the appellant has taken me through the entire judgment and award of the Tribunal and the relevant material on the record of the case for the purpose of deciding this appeal at the admission stage. The learned advocate for the appellant has submitted that the Tribunal has not awarded adequate compensation on different heads and, therefore, the compensation awarded to the appellant deserves to be enhanced.

8. Taking into consideration the injuries sustained by the appellant in the vehicular accident and the period of treatment undergone by him, in my view, the Tribunal has awarded a just and adequate compensation of Rs.10,000/under the head of pain, shock and suffering. After taking into consideration permanent partial disability suffered by the appellant at 4%, as agreed by both the parties, the Tribunal has awarded Rs. 11,520/under the head of future loss of income, which, in my view, is quite just and proper. The compensation awarded by the Tribunal on other heads i.e. actual loss of income, transportation charges and special diet, is also just, reasonable and adequate and does not call for any interference.

9. As a result of foregoing reasons, the appeal is dismissed summarily. The Tribunal is directed to pay the amount, which is invested in the Nationalized Bank for a period of six years, on maturity, in favour of the appellant by an account payee cheque.

(M.H. Kadri, J.)

(swamy)